MILESTONE PETROLEUM, INC.,
PHILLIPS OIL CO.

IBLA 84-820 Decided February 14, 1985

Appeal from the decision of the Colorado State Office of the Bureau of Land Management holding that oil and gas lease C-18629 had expired and was not extended by diligent drilling operations in progress at the expiration of the lease term.

Affirmed.

1. Oil and Gas Leases: Drilling -- Oil and Gas Leases: Expiration -- Oil and Gas Leases: Extensions -- Oil and Gas Leases: Suspensions

Where a blizzard prevented a drilling rig from reaching a drill site in time to begin operations before the November 30 expiration date of the lease, and a lease suspension was therefor granted effective November 1, to "terminate automatically on the first of the month in which actual approved drilling operations are commenced," and such operations were commenced on December 7, the new expiration date of the initial lease term was December 31. Because the resultant dry hole was drilled, finished, plugged and abandoned by December 25, no drilling operations were in progress at the close of December 31, and the lease expired. The drilling operations previously concluded did not qualify the lease for a 2-year extension.

APPEARANCES: Laura L. Payne, Esq., Denver, Colo., for Milestone Petroleum, Inc.; Thomas L. Barton, Esq., Denver, Colo., for Phillips Oil Co.; Lowell L. Madsen, Esq., Denver, Colo., Department Counsel, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Oil and gas lease C-18629 was issued effective December 1, 1973, for 785.58 acres in Lincoln and Kiowa counties, Colorado, for a primary term of 10 years. Therefore, in the regular course of events, the expiration date would have been November 30, 1983. Phillips Oil Company (Phillips) became

the lessee through a corporate merger. Phillips subsequently entered into a farmout agreement with Milestone Petroleum, Inc. (Milestone) whereby Milestone would drill a well on the N 1/2 of sec. 6, T. 18 S., R. 52 W., 6th Principal Meridian.

Milestone procured a permit to drill, approved by the Bureau of Land Management (BLM) on November 22, 1983, and "dirt work" for drill pad preparation was begun that day. Milestone contracted for a drilling rig located some 45 miles distant to be moved to the drillsite not later than November 27, 1983, so that drilling operations would commence and be in progress on or before the November 30 expiration date. Milestone anticipated that it would thereby earn entitlement to the two-year lease extension afforded by the Mineral Leasing Act, 30 U.S.C. § 226(e) (1982); see 43 CFR 3107.1. The statute and regulation provide that any lease on which actual drilling operations are commenced prior to the end of its primary term, and are being diligently prosecuted at the end of the primary term, shall be extended for two years, subject to the rental being timely paid. (Milestone had paid the 11th year rental.)

Milestone had made its arrangement for the services of the drilling rig on November 25, 1983. That night, about midnight, a severe winter snowstorm struck the area, closing all roads between Hugo, Colorado, where the rig was, and the drillsite.

In late November, Milestone telephoned BLM's Canon City District Office, explained the situation, and received verbal assurances that a lease suspension and a concomitant extension would be granted. On November 30 Milestone filed a formal written request for suspension with BLM. However, it did not wait for a response to the written request but, in reliance on the verbal assurances previously given, it proceeded to move the drilling rig onto the site as soon as conditions made that possible. Actual drilling operations commenced on December 7, 1983.

On December 8, 1983, BLM sent a certified letter to Milestone which granted the suspension in the following terms:

> Pursuant to the provisions of 43 CFR 3103.3-8, the requested suspension is hereby granted effective November 1, 1983, the first day of the month in which the application was filed. The suspension will terminate automatically on the first of the month in which actual, approved drilling operations are commenced or will automatically terminate no later than January 1, 1984.
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> Beginning November 1, 1983, rental payment required by lease C-18629 will be waived for each full month during which all operations and production are suspended.

The date of Milestone's receipt of this letter cannot be verified because BLM failed to put the return receipt card in the record. Milestone alleges that it was not received until December 13, 1983, which this Board has no cause to doubt. At that time, according to Milestone, it was "well after drilling operations were commenced." Thereafter, says Milestone, "Drilling was diligently pursued and after tests determined that the well was a dry hole it was plugged and abandoned on December 25, 1983."

Thus, there was no drilling being conducted at the end of the lease term, which under the provisions of the lease suspension, was December 31, 1983. By its decision dated March 5, 1984, BLM declared that the lease had expired on December 31, 1983, and denied approval of a pending assignment of the lease from Phillips Oil Company to Phillips Petroleum Company. This decision was vacated on April 4, 1984, apparently to afford BLM personnel time to review the matter and, perhaps, to reconsider the conclusion reached. However, by subsequent decision dated July 18, 1984, BLM addressed the contentions presented by the parties in the interim and reaffirmed its earlier holdings that the lease had expired on December 31, 1984; that the two-year extension could not be recognized as earned; and that the pending application for approval of the assignment of record title was properly denied.

On appeal to this Board, the arguments made by appellants are essentially those presented to BLM. They maintain that the regulations provided BLM with the latitude to set the period of the lease suspension from the date of the intervening event (the November 25th snowstorm) to the date when actual drilling operations commenced (December 7th), a period of 13 days, which, when added to the lease term, would yield a lease expiration date of December 20, 1984, at which time actual drilling operations were being diligently conducted. They argue that since the "dirt work" was performed at the drill site earlier in November, to suspend the lease retroactively for the entire month of November is to create a fiction which does not comport with the facts. They further assert that even if the relation back to the suspension to the first of the month is necessary or desirable for administrative purposes, such as royalty or rental computations, the suspension of actual operations could still be limited to the 13-day period in which the drilling was interdicted.

BLM, in its July 18, 1984 decision, considered and rejected these arguments, saying:

> When 43 CFR 3103.4-2(c) is read together with 43 CFR 3165.1(c), the authorized officer is left with no choice but to fix the first day of the month in which a proper application to suspend the operating and production requirements is submitted. Since the application to suspend was submitted on November 29, 1983, the suspension of the lease, when the application was granted, began November 1, 1983.
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> 43 CFR 3165.1(c) indicates clearly that suspensions shall "terminate when they are no longer justified in the interest of conservation, when such action is in the interest of the lessor, or as otherwise stated by the authorized officer in the approval letter." 43 CFR 3103.4-2 makes it clear that the obligation to pay rentals and royalties resumes on the first day of the month in which operations are resumed. While the provisions of the two regulations may present interpretive problems for suspensions that are never followed by the resumption or commencement of drilling operations, the case of lessee C-18629 does not conflict with either regulatory provision. The letter from the authorized officer approving the suspension indicated clearly that the suspension began November 1, 1983 and would end the first of the month in which drilling operations resumed, but not later than January 1, 1984.

43 CFR 3103.4-2(c) does appear to provide for an alternative to fixing the date of suspension on the first day of the lease month in which the suspension was effective, stating:

> (c) A suspension shall take effect as of the time specified in the direction or assent of the authorized officer. Rental and minimum royalty payments shall be suspended during any period of suspension of all operations and production directed or assented to by the authorized officer beginning with the first day of the lease month on which the suspension of operations or production becomes effective or if the suspension of operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. * * * [Emphasis added.]

By contrast, 43 CFR 3165.1(c) makes no provision for such an alternative fixing of the effective date of suspension. It reads:

> (c) If approved, a suspension of operations and production will be effective on the first of the month in which the completed application was filed with the authorized officer. Suspensions will terminate when they are no longer justified in the interest of conservation, when such action is in the interest of the lessor, or as otherwise stated by the authorized officer in the approval letter. [Emphasis added.]

Given the apparent ambiguity, this Board is reluctant to concur in BLM's statement that when the two regulations are read together, "the authorized officer is left with no choice but to fix the first day of the month in which a proper application to suspend * * * is submitted." However, we need not, and do not, decide this question, as it is irrelevant to our resolution of the case. What is clear from these regulations is that the authorized officer has the authority to fix the effective date as of the first day of the month in which the application is made, and that if he does so, the "suspension shall take effect as of the time specified" by him. In this case, "the time specified" was the 1st of November. Moreover, in its formal written request for lease suspension, appellants had expressly requested that the suspension date from November 1, 1983. Where the initial term of a lease has been suspended for one month, that month must be added to the end of the lease term. No lesser period may be substituted without violating the lease contract by shortening its primary term.

The failure to gain a two-year extension is not attributable to BLM in this instance. Rather, the fault is exclusively Milestone's. It scheduled its drilling program with the calculated intention of taking advantage of the statute to gain a two-year extension. When that schedule was disrupted by the snow storm, and BLM granted relief in the form of a lease suspension, Milestone should have recognized that if it still wished to secure the extension it would have to re-schedule the drilling operation accordingly. When it received the actual suspension letter on December 13, there was still time to delay the drilling. The duration of the suspension was clearly expressed, but Milestone's personnel either failed to grasp its implications or deliberately chose to proceed with the drilling despite the knowledge that they

would finish before the new expiration date. Perhaps the expense of retaining the rig on the site for several extra days influenced their decision.

In any event, Milestone neither adjusted its drilling schedule nor sought to have BLM adjust the period of suspension. The fact that appellants originally planned to qualify for the extension only to have that plan frustrated by a storm does nothing to enhance their claim that the equity and the public interest require that we adjust the lease term nunc pro tunc so as to fulfill their original expectations. Robert Burns' observation concerning "the best laid plans" applies here.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Gail M. Frazier
Administrative Judge